

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

EARL D. BOOTH,
Plaintiff,

Case No.: 23-cv-00758
Honorable Hala Y. Jarbou

v.

MOTION

SCOTT FINK,
in his individual capacity,

and

SHERIFF SEAN DUSH,
in his official capacity,
Defendants

MOTION TO HOLD DEFENDANT DUSH'S RULE 12(C) MOTION IN ABEYANCE

NOW COMES Plaintiff Earl Booth, by counsel, and moves for this Court to immediately enter an order holding the Rule 12(c) motion filed by Defendant Dush in abeyance pending the outcome of the pending motion to dismiss Defendant Dush, without prejudice, pursuant to Rule 21 of the Federal Rules of Civil Procedure. See **ECF No. 53**. The complicated merits-based motion is unwarranted when Plaintiff is already seeking to terminate Defendant Dush from this case.

On February 19, 2024, Defendant Dush's counsel's legal assistant emailed the undersigned stating "[w]e"—whoever that is—"intend to file a Motion to Dismiss Pursuant to FRCP 12(C). Please advise if you concur with the relief requested." **Exhibit A**. The undersigned concurred with the relief requested without prejudice. *Id.* However, the undersigned further wrote back—

Because you're going to be filing a rule 12[c] motion I'm going to file a motion to ask the court to suspend and hold your forthcoming motion in advance, pending the outcome of the rule 21 motion now pending. Please let me know if you concur.

Id. Instead of the courtesy of a response or to have further discussion to save on party and court resources, Defendant's counsel sua sponte filed the Rule 12(c) motion containing at least six complicated legal issues like *Rooker-Feldman*, party propriety, merits issues, and injunction challenges. Many of the arguments have already been reject in a parallel case pending the Eastern District. See *Lindke v. Lane*, 2023 U.S. Dist. LEXIS 90917 (E.D. Mich. May 24, 2023). If this Court dismisses Defendant Dush under Rule 21, it makes the Rule 12(c) motion and its complicated issues (and erroneous arguments) totally moot.

BRIEF IN SUPPORT

When an act may or must be done within a specified time, like responding to an unnecessary Rule 12(c) motion, the court may, for good cause, extend the time... before the original time or its extension expires. FRCP 6(b)(1)(A).

RELIEF REQUESTED

The Court is requested to hold Defendant Dush's Rule 12(c) motion in abeyance pending the resolution of the already-filed and pending motion to dismiss Defendant Dush pursuant to Rule 21 of the Federal Rules of Civil Procedure.

Date: February 19, 2024

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
by PHILIP L. ELLISON (P74117)
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned attorney of record, hereby certify that on the date stated below, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel or parties of record.

Date: February 19, 2024

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
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Attorney for Plaintiff